

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROHM AND HAAS TEXAS, INC.,

Defendant.

Civil Action No. H 06 1622

**AGREEMENT AND ORDER REGARDING MODIFICATION OF
THE AUGUST 10, 2006 CONSENT DECREE**

I. Background

A. On May 11, 2006, Plaintiff United States of America filed the Complaint in this action for injunctive relief and civil penalties pursuant to Clean Water Act ("CWA") Section 301, 33 U.S.C. § 1311; Clean Air Act ("CAA") Section 112(d), 42 U.S.C. § 7412(d); and Resource Conservation and Recovery Act ("RCRA") Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g), at a chemical manufacturing facility in Deer Park, Texas ("the Facility") which Defendant Rohm and Haas Texas, Inc. ("Rohm and Haas" or "Defendant") owns and operates.

B. Also on May 11, 2006, the United States filed a Notice of Lodging of Consent Decree with the Consent Decree signed by the Parties attached. In accordance with Paragraph 78 of the lodged Consent Decree and 28 C.F.R. § 50.7, the United States published a Notice of Lodging of the Consent Decree in the Federal Register at 71 Fed. Reg. 30163 (May 25, 2006). During the subsequent 30-day public comment period, which expired on June 24, 2006, the United States received no comments from the public.

C. On August 2, 2006, the United States filed a Motion to Enter the Consent Decree.

D. On August 10, 2006, the Court granted the United States' Motion and entered the Consent Decree.

D. Under the terms of the Consent Decree, Defendant was required to pay a civil penalty (Consent Decree Section IV), implement monitoring and corrective action at its Facility (Consent Decree Section VI), and implement a supplemental environmental project ("SEP") (Consent Decree Section V).

E. Defendant timely paid the required civil penalty of \$485,000.

F. Defendant has implemented the monitoring and corrective action required by Consent Decree Section VI (Monitoring and Corrective Action for Facility).

A. Supplemental Environmental Project

G. The SEP required by Consent Decree Section V (Supplemental Environmental Project) was intended to secure significant environmental protection and improvements and consisted of Rohm and Haas funding the acquisition of property (“the Conservation Property”) consisting of at least 300 acres of coastal freshwater wetlands and associated coastal upland prairie within the Galveston Bay Watershed by a conservation group (“the Non-Profit”). Consent Decree Paragraph 13. The transfer of the Conservation Property to the Non-Profit was to be subject to a Conservation Easement that would preserve the Conservation Property in perpetuity for protection of its conservation values. Consent Decree Paragraph 16. Contemporaneous with the transfer of the Conservation Property to the Non-Profit, the Conservation Easement was to be transferred to a second non-profit (“the Holder”). Id. The Holder was to ensure that the future use of the Conservation Property was consistent with the Conservation Easement. Id. The SEP was expected to cost Rohm and Haas \$670,000.

H. Rohm and Haas made good faith efforts to implement the SEP. At the time the Consent Decree was lodged, Rohm and Haas had already initiated purchase negotiations relative to a tract of land in Galveston County, Texas (“the Hitchcock property”) as the potential Conservation Property. The Hitchcock property had been the focus of a conservation effort by a local non-profit organization, Scenic Galveston, Inc. (“Scenic Galveston”). If Scenic Galveston had been able to persuade the owner of the Hitchcock property to accept a purchase offer, it was planned that Scenic Galveston would take title to a portion of the Hitchcock property utilizing funding provided by the Rohm and Haas. Despite the diligent efforts of Scenic Galveston and Rohm and Haas, the owner of the Hitchcock property did not demonstrate a willingness to sell.

I. Consistent with the provisions of Consent Decree Paragraph 13, Rohm and Haas initiated a search for an alternate Conservation Property. Rohm and Haas identified a potential alternate Conservation Property located in Liberty County, Texas (“the Demijohn Island Property”). The Demijohn Island Property is adjacent to the Trinity River Wildlife Refuge which is owned by the United States of America and administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service. Rohm and Haas is also pursuing other alternative sites for transfer to a government agency in the event that the Demijohn Island site cannot be acquired in a timely fashion.

J. Rohm and Haas’ proposal to fund acquisition of the Demijohn Island Property by the United States of America and administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service has been reviewed by the U.S. EPA which determined that the plan satisfies the requirement set forth in Consent Decree Paragraph 13 that the Conservation Property “contain a mix of coastal estuarine or freshwater wetlands and upland habitats that function together to protect water quality and provide support for fisheries and wildlife.”

K. Rohm and Haas' proposal to fund acquisition of the Demijohn Island Property by the United States of America and administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service has also been reviewed by the U.S. Fish and Wildlife Service which has expressed an interest in accepting the donation. Before the U.S. Fish and Wildlife Service can accept a donation of the Demijohn Island Property, the following requirements must be satisfied:

- 1) An Environmental Site Assessment, Level 1 Survey on the property to be donated must be completed by the U.S. Fish and Wildlife Service within 1 year prior to the real property acquisition (donation). If results of the Environmental Site Assessment, Level 1 Survey indicate that there may be potential hazardous substances or other environmental problems on the subject property, additional investigation may need to be conducted by the U.S. Fish and Wildlife Service and/or the donation may be refused.
- 2) The Regional Director for the U.S. Fish and Wildlife Service (Region 2) must formally accept/approve the property as donation.
- 3) The U.S. Department of Justice closing standards must be complied with during the real estate transaction.

L. As presently worded, Consent Decree Paragraph 13 requires that the Conservation Property be transferred to a Non-Profit. This requirement conflicts with Rohm and Haas' proposal to fund acquisition of the Demijohn Island Property by the U.S. Fish and Wildlife Service.

M. The Parties also agree that if Rohm and Haas funds acquisition of the Conservation Property by the U.S. Fish and Wildlife Service (or another government agency), the need for the Conservation Easement required by Consent Decree Paragraph 16 would be obviated.

N. Consent Decree Paragraph 19 provides, "If no property is purchased for conservation purposes pursuant to the terms of this Consent Decree within one year of the Effective Date of this Consent Decree, EPA may direct the SEP be terminated, in which event Rohm and Haas shall pay a \$670,000 civil penalty . . . within thirty (30) days of receiving written notification from EPA that the SEP is terminated." The Parties agree that completion of the SEP is preferable to payment of a Civil Penalty pursuant to Consent Decree Paragraph 19.

O. The Parties are agreed that Consent Decree Section V (Supplemental Environmental Project) should be amended to state that Rohm and Haas may choose to fund the acquisition of the Conservation Property by a government agency and that, if it so chooses, the requirement for Conservation Easement would not be applicable.

P. The Parties are also agreed that, if Consent Decree Section V (Supplemental Environmental Project) is so amended, the amendment should allow sufficient time for Rohm and Haas to complete implementation of the SEP.

B. Termination of Other Consent Decree Requirements

Q. Consent Decree Paragraph 73 provides that the Parties may move the Court to terminate the Consent Decree “[a]fter Rohm and Haas has (A) completed all requirements of this Consent Decree related to the Supplemental Environmental Project; (B) paid the civil penalty and any stipulated penalties demanded by the United States, and (C) maintained compliance with the requirements of the CWA, the TPDES Permit, and this Consent Decree for a period of twelve consecutive months after the Effective Date of this Consent Decree.”

R. The parties agree that, despite good faith efforts to do so, Rohm and Haas has not yet satisfied the requirements of Consent Decree Paragraph 73(A) by completing all requirements of the Consent Decree related to the Supplemental Environmental Project.

S. The Parties agree that, Rohm and Haas has met the requirements of Consent Decree Paragraph 73(B) by paying the civil penalty. The United States has not demanded any stipulated penalties.

T. The Parties agree that Rohm and Haas has met the requirements of Consent Decree Paragraph 73(C) by maintaining compliance with the requirements of the CWA, the Texas Pollutant Discharge Elimination System Permit No. 00458 (the “TPDES Permit”), and this Consent Decree for a period of twelve consecutive months after the Effective Date of the Consent Decree. The Effective Date of the Consent Decree was August 10, 2006 and Rohm and Haas maintained compliance with the requirements of the CWA, the TPDES Permit, and the August 10, 2006 Consent Decree between August 10, 2006 and August 10, 2007.

U. In October 2007, Rohm and Haas violated the effluent limitations in the TPDES Permit for Biochemical Oxygen Demand (“BOD”) daily and monthly averages. Since this violation falls outside the twelve month period specified in Consent Decree Paragraph 73(C), it is not a basis for denying a Motion to Terminate the Consent Decree. Furthermore, EPA has determined that, subsequent to the October 2007 problem, Rohm and Haas has taken corrective measures that are reasonably likely to prevent further discharges in excess of the effluent limitations in the TPDES Permit for BOD daily and monthly averages.

V. Rohm and Haas has requested modification of the Consent Decree to allow termination of all requirements except those related to the SEP. Once the SEP is finalized, Rohm and Haas would then move the Court for final termination of the Consent Decree.

W. The United States has determined that Rohm and Haas has made good faith efforts to complete the requirements of the Consent Decree related to the Supplemental Environmental Project. Accordingly, the United States agrees with Rohm and Haas’ request to

modify the Consent Decree to allow termination of all requirements except those related to the Supplemental Environmental Project.

C. Modification of the Consent Decree

X. Consent Decree Paragraph 72 states, "The terms of this Consent Decree may be modified only by a subsequent written agreement signed by both Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court."

Y. This Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree constitutes a written agreement to modify the Consent Decree signed by both Parties.

Z. The Parties agree that the modifications to the Consent Decree proposed in this Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree constitute material changes to the Consent Decree which will be effective only upon approval by the Court.

AA. The Parties recognize, and the Court by entering this Consent Decree finds, that this Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree has been negotiated by the Parties in good faith, and that this Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, pursuant to Consent Decree Paragraph 72 and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that the Consent Decree Entered on August 10, 2006 is hereby modified as follows

1. Consent Decree Section V (Supplemental Environmental Project) (including Consent Decree Paragraphs 13 to 25) shall be replaced with the following:

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

13. General Description: As a Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure significant environmental protection and improvements, Rohm and Haas shall fund the acquisition of property (hereafter the "Conservation Property" ") consisting of coastal freshwater wetlands and associated coastal upland prairie, within the Galveston Bay Watershed, described in Appendix A, by a Non-Profit conservation group ("Non-Profit") or a government agency. Any Non-Profit or government agency that takes title to the Conservation Property must be willing and able to manage the Conservation Property so as to protect the Conservation Property's ability to protect water quality and provide support for fisheries and wildlife. For purposes of this Consent Decree, the U.S. Fish and Wildlife Service ("FWS") is a government agency that satisfies the requirements of the preceding sentence. The

Conservation Property for which Rohm and Haas is to provide funding for acquisition must contain a mix of coastal estuarine or freshwater wetlands and upland habitats that function together to protect water quality and provide support for fisheries and wildlife. At a minimum, the Conservation Property shall consist of at least three hundred (300) acres, though Rohm and Haas shall use its best efforts to propose a parcel in the 450-600 acre range.

14. Submittal of SEP Conservation Proposal: The requirements of this Paragraph shall apply to any SEP proposed by Rohm and Haas except the acquisition of a Conservation Property located in Liberty County, Texas known as the Demijohn Island Property by the United States of America and administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service. At its election, Rohm and Haas may proceed with a SEP involving the acquisition of the Demijohn Island Property by the United States of America and administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service without a SEP Conservation Proposal. If Rohm and Haas so elects, it must demonstrate in the SEP Completion Report submitted pursuant to Paragraph 20 that the SEP complies with the requirements of Suparagraphs 14(B), (C)(ii), and (E) below. If Rohm and Haas proposes any SEP other than the acquisition of the Demijohn Island Property by the United States of America and administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service, then, within one hundred fifty (150) days after the date the Court Enters this *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree*, Rohm and Haas shall submit to the EPA a SEP Conservation Proposal which includes the following:

A. A detailed description of the proposed Conservation Property, the proposed Non-Profit or government agency that will take title to the Conservation Property, and, if Rohm and Haas proposes to transfer the Property to a Non-Profit, the identity of the entity that will hold the Conservation Easement ("Holder"). The proposed Conservation Property shall include at least 300 acres.

B. A certification by an insured title examiner in good standing in the State of Texas listing all encumbrances to the Conservation Property. The certification shall list all liens and encumbrances of record along with any associated release(s) and subordination agreement(s). The certification shall include a copy of all listed liens and encumbrances.

C. A copy of a contract or agreement between Rohm and Haas and/or its agent and the entity that will take title to the Conservation Property.

i. If a Non-Profit will take title to the Conservation Property, Rohm and Haas shall provide a proposed contract, consistent with the requirements of Paragraph 15, obligating the Non-Profit to hold title to the Conservation Property for permanent conservation in substantially the same manner provided in Consent Decree Appendix B (Draft Contractual Agreement between Rohm and Haas and SGI).

ii. If a government agency will take title to the Conservation Property, Rohm and Haas shall provide a copy of the agreement with the government agency, but the agreement need not conform to the

requirements of Consent Decree Appendix B (Draft Contractual Agreement between Rohm and Haas and SGI).

iii. If an entity other than the United States of America and administered by the Secretary of the Interior through the U.S. Fish and Wildlife Service will be take title to the Conservation Property, information demonstrating that such entity is willing and able to manage the Conservation Property so as to protect the Conservation Property's ability to protect water quality and provide support for fisheries and wildlife.

iv. If a government agency will take title to the Conservation Property, Rohm and Haas may propose to transfer title to the Conservation Property to an agent that will act as an intermediary. The agent must be contractually obligated to transfer title to the government agency. If Rohm and Haas makes such a proposal, it shall

(a) Provide an explanation of the need to utilize an agent;

(b) Provide evidence that the agent is qualified to fulfill its role and contractually bound to transfer title to the government agency in accordance with a schedule that is acceptable to the EPA. The agent must also be prohibited from transferring any interest in the Conservation Property, including any mineral lease, to any entity other than the government agency; and

(c) Provide the schedule on which the agent will transfer title to the Conservation Property to the government agency.

In the event an agent is utilized by Rohm and Haas to transfer the Conservation Property to a government agency, all the requirements of this Consent Decree applicable to a direct transfer of the Conservation Property to a government agency will apply.

D. If a Non-Profit will take title to the Conservation Property:

i. A proposed Conservation Easement covering the Conservation Property which is substantially similar to the Conservation Easement attached as Exhibit C to Consent Decree Appendix C (Model Conservation Easement and Restrictive Covenant Agreement) and which satisfies the requirements of Paragraph 16 below; and

ii. A proposed Restrictive Covenant Agreement which is substantially similar to the "Restrictive Covenant Agreement to Protect Conservation Values" attached as Exhibit C to Consent Decree Appendix C (Model Conservation Easement and Restrictive Covenant Agreement) and which satisfies the requirements of Paragraph 16 below;

iii. Information demonstrating that the proposed Holder is qualified as a Holder under Chapter 183 of the Texas Natural Resource Code and that the designated Holder has the willingness and the financial,

administrative, and technical resources to fulfill its obligations as Holder of the Conservation Easement.

E. The existence of encumbrances including a mineral lease, severed mineral interests or mineral rights, a roadway maintenance agreement, an inundation easement, a right of way deed, a roadway easement, public access to streets, or an electrical easement on the proposed Conservation Property shall not, in and of themselves, disqualify the proposed tract so long as:

- i. The encumbrances do not conflict with the underlying purpose of the SEP, and
- ii. Any mineral lease(s) is (are) being operated in compliance with applicable federal and state laws, regulations, and permits including requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 6901 et seq., related to underground injection wells and requirements of the CWA relating to discharges of pollutants and Spill Prevention, Control, and Countermeasures ("SPCC") Plans.

EPA will review the Rohm and Haas SEP Conservation Proposal to determine whether it will satisfy the purpose of the SEP and the requirements of this Consent Decree. If EPA disapproves the SEP Conservation Proposal, it shall specify in writing the basis for its decision. Within ninety (90) days of receipt of EPA's disapproval, Rohm and Haas shall either (A) resubmit its Proposal or another conservation proposal to the United States in accordance with Paragraph 17, or (B) commit to payment of a \$670,000 stipulated penalty, as provided in Paragraph 42 of the August 10, 2006 Consent Decree, within thirty (30) days after submission of such a notification to EPA. If EPA disapproves a second or subsequent Rohm and Haas SEP Conservation Proposal, EPA may either request a new SEP Conservation Proposal from Rohm and Haas, or EPA may instead terminate the SEP. If the SEP is terminated by EPA, Rohm and Haas shall pay a \$670,000 stipulated penalty, as provided in Paragraph 42 of the August 10, 2006 Consent Decree, within thirty (30) days of receiving written notification from EPA that the SEP is terminated.

15. Transfer of the Conservation Property: Within ninety (90) days after EPA approves the Rohm and Haas SEP Conservation Proposal under Paragraph 14, Rohm and Haas shall provide to EPA copies of the documents through which it will effectuate the approved Proposal, including:

A. A Purchase and Sale Agreement that provides for the purchase and transfer of the Conservation Property to the Non-Profit or government agency that will hold title. The Purchase and Sale Agreement shall provide for the purchase and transfer of all interests in the Conservation Property except the encumbrances listed in the Subparagraph 14(B) certification.

B. If title to the Conservation Property will be transferred to a Non-Profit, the documents provided by Rohm and Haas shall also include:

- i. A contract between Rohm and Haas and the the Non-Profit to hold title to the Conservation Property for permanent conservation in substantially the same manner provided in Consent Decree Appendix B (Draft Contractual Agreement between Rohm and Haas and SGI). Rohm

and Haas shall enforce the terms of this contract against the Non-Profit. As provided in Paragraph 73(C), this requirement shall remain in effect after the Court grants a Motion for Final Termination of the Consent Decree filed under Section XIX (Termination).

ii. The approved Conservation Easement submitted under Paragraph 14(D)(i); and

iii. The approved Restrictive Covenant Agreement submitted under Paragraph 14(D)(ii).

Within sixty (60) days after EPA approves the above-described closing documents, Rohm and Haas shall arrange for the closing of the transactions. Promptly after the transfer of the Conservation Property to the Non-Profit or government agency, Rohm and Haas shall arrange for the recordation of all documents relevant to the transfer in the appropriate county records office. Thereafter, each deed, title or other instrument conveying an interest in any portion of the Conservation Property shall contain a notice stating that the Conservation Property is subject to the conservation requirements of this Consent Decree, including any Conservation Easement, and the recorded location of all relevant transaction documents. Within thirty (30) days after the transfer, Rohm and Haas shall provide to the United States confirmation of the transfer of the Conservation Property to the approved Non-Profit or government agency and a true and correct copy of all recorded deeds, titles, and/or other instruments documenting the transfer of interest, including, if applicable, the recorded Conservation Easement and the recorded Restrictive Covenant Agreement.

16. Conservation Easement and the Restrictive Covenant Agreement: If the Conservation Property will be transferred to a Non-Profit, then:

A. Contemporaneous with the transfer of the Conservation Property to the Non-Profit, Rohm and Haas shall:

i. Direct the Non-Profit to execute the approved Conservation Easement;

ii. Require the Non-Profit to execute the approved Restrictive Covenant Agreement with Rohm and Haas. After all signatures to the Restrictive Covenant Agreement have been obtained, Rohm and Haas shall also require the Non-Profit to record the Restrictive Covenant Agreement.

B. The Holder shall execute the Restrictive Covenant Agreement and shall ensure that the future use of the Conservation Property is consistent with the Conservation Easement. In order to accomplish this, the Holder must commit that it will:

i. Monitor the Conservation Property and enforce the Conservation Easement through available legal and judicial means, and

ii. Inform the United States and Rohm and Haas in the event that it will no longer be able to meet its obligations at least thirty (30) days before the Holder ceases to do business, ceases to exist as a legal entity, or otherwise determines that it will be unable to meet its obligations under the Conservation Easement, whichever is sooner.

C. The Conservation Easement and the Restrictive Covenant Agreement shall comply with the legal requirements of Chapter 183 of the Texas Natural Resource Code, and be enforceable under the laws of the State of Texas. The Conservation Easement shall preserve the Conservation Property in perpetuity for protection of the Property's conservation values, as described in the Conservation Easement. EPA and Rohm and Haas shall retain the right to enforce the terms of the Conservation Easement in accordance with the terms of the Restrictive Covenant Agreement.

D. The Conservation Easement shall be granted with warranty covenants, free and clear of all prior liens and any encumbrances not listed in the Paragraph 14(B) certification.

E. The Holder and the Non-Profit shall agree to be bound by the terms of the Restrictive Covenant Agreement.

F. The Conservation Easement shall require that:

i. If the Non-Profit acquires mineral interests when it takes title to the Conservation Property, the Non-Profit shall not issue any new mineral leases on the Conservation Property;

ii. If there are existing mineral leases on the Conservation Property at the time the Non-Profit takes title, the Non-Profit shall inspect the existing mineral leases periodically to verify compliance with the terms of the lease and applicable government rules including the requirements referenced in SubParagraph 14(e)(ii);

iii. The Non-Profit shall comply with the restrictions in the Conservation Easement; and

iv. Rohm and Haas must retain the right to enforce the terms of the Conservation Easement against the Non-Profit and the Holder.

17. In the event that either:

A. Rohm and Haas determines that the SEP described in a SEP Conservation Proposal approved under Paragraph 14 is not practicable; or

B. Rohm and Haas completes the SEP described in a SEP Conservation Proposal approved under Paragraph 14 and the documented itemized costs of the SEP, as described in Paragraph 21, are less than \$545,000, Rohm and Haas may, following the procedures set forth in Paragraphs 14-16, propose alternate or additional wetlands located within the Galveston Bay Watershed as an alternative Conservation Property such that the documented itemized costs of the SEP, as described in Paragraph 21, exceeds \$545,000 and totals as much as \$670,000. EPA will review any such proposal as provided in Paragraphs 14-16. If EPA approves the proposal, the alternative or additional tracts shall be transferred to a government agency or Non-Profit in accordance with the applicable requirements of this Consent Decree.

18. A. If the Conservation Property will be transferred to a Non-Profit and the documented itemized costs of the SEP, as described in Paragraph 21(A) through (E), totals less than \$670,000 but more than \$545,000, Rohm and Haas shall deposit the difference between \$670,000 and the documented itemized costs of the SEP, as described in Paragraph 21(A) through (E), into an escrow account.

Rohm and Haas shall make the deposit within sixty (60) days of the date the Conservation Property is transferred to the Non-Profit. Within twenty (20) days after establishing and funding the escrow account, Rohm and Haas shall submit documentation to EPA identifying the escrow account and documenting the amount deposited. Rohm and Haas shall make arrangements to ensure that the funds deposited into the escrow account (hereinafter referred to as "Conservation Property Management Funds") shall be used by the Non-Profit and/or the Holder to manage the Conservation Property as follows:

- i. The Non-Profit may use Conservation Property Management Funds only for activities specified in the contract between Rohm and Haas and the Non-Profit referred to in SubParagraph 15(B)(i).
- ii. The Holder may use Conservation Property Management Funds only for activities specified in SubParagraph 16(B).

If any Conservation Property Management Funds remain in the escrow account established pursuant to this Paragraph five (5) years after the transfer of the Conservation Property to the Non-Profit, the remaining funds, plus any accrued interest, shall be paid as a stipulated penalty as provided in Paragraph 42 of the August 10, 2006 Consent Decree within thirty days after the end of this five year period. If the Court grants a Motion for Final Termination of Consent Decree under Section XIX (Termination), the requirement to pay as a stipulated penalty any Conservation Property Management Funds remaining in the escrow account established pursuant to this Paragraph five (5) years after the transfer of the Conservation Property to the Non-Profit shall remain in effect.

B. If the Conservation Property will be transferred to a government agency and the documented itemized costs of the SEP, as described in Paragraph 21(A) through (E), totals less than \$670,000 but more than \$545,000, Rohm and Haas shall pay the difference between \$670,000 and the documented itemized costs of the SEP, as described in Paragraph 21(A) through (E), as a stipulated penalty as provided in Paragraph 42 of the August 10, 2006 Consent Decree within sixty (60) days of the date the Conservation Property is transferred to the government agency.

19. If no Conservation Property is transferred to a government agency or Non-Profit pursuant a SEP Conservation Proposal approved under Paragraph 14 within one year after the date the Court enters this *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree*, EPA may direct the SEP to be terminated, in which event Rohm and Haas shall pay a \$670,000 stipulated penalty as provided in Paragraph 42 of the August 10, 2006 Consent Decree within thirty (30) days of receiving written notification from EPA that the SEP is terminated.

20. SEP Completion Report: Not later than sixty (60) days after the date the Conservation Property is transferred to government agency or Non-Profit pursuant to a SEP Conservation Proposal approved under Paragraph 14, Rohm and Haas shall submit a SEP Completion Report to EPA for review and approval under Section VI (Review of Submittals). The SEP Completion Report shall contain and certify the following:

- A. A detailed description of the SEP as implemented;

B. The documented itemized costs of the SEP. Such costs may include the costs described in Paragraph 21. Documentation may take the form of copies of cancelled checks, copies of monthly reports regarding equipment costs and materials purchased, or other appropriate documentation of other SEP costs;

C. A description of any problems encountered in completing the SEP and the solutions thereto;

D. A copy of any deeds, contracts, Conservation Easements, Restrictive Covenant Agreements, and related transfer documents entered into as a part of the SEP;

E. A certification that the SEP has been completed in compliance with the requirements of this Consent Decree; and

F. A description of the environmental and public health benefits resulting from implementation of the SEP.

The SEP Completion Report shall be signed as provided in Paragraph 33. EPA will review the SEP Completion Report submitted by Rohm and Haas to determine whether it satisfies the requirements of this Consent Decree. If EPA disapproves the SEP Completion Report, it shall specify in writing the basis for its decision. Within thirty (30) days of receipt of EPA's disapproval, Rohm and Haas shall modify and resubmit the SEP Completion Report. This process shall continue until EPA approves the SEP Completion Report. If EPA disapproves a second or subsequent the SEP Completion Report, EPA may exercise any of the options described in Paragraph 28. If the documented itemized costs of the SEP, as described pursuant to Paragraph 20(B), in the approved SEP Completion Report are less than \$670,000, Rohm and Haas shall pay the difference between the documented itemized costs of the SEP in the approved SEP Completion Report and \$670,000 as a stipulated penalty, as provided in Paragraph 42 of the August 10, 2006 Consent Decree, within thirty (30) days of the date EPA approves the SEP Completion Report.

21. For purposes of Subparagraph 20(B), qualifying costs include:

A. the acquisition price of the Conservation Property;

B. Reasonable expenditures for a land survey, environmental assessment, and management costs;

C. reasonable expenditures for real estate broker fees; reasonable and customary attorneys' fees and consultant's fees associated with the acquisition of the Conservation Property and finalizing any Conservation Easement and Restrictive Covenant Agreement;

D. transfer taxes or other similar transaction costs; transaction costs for transferring any Conservation Easement;

E. any fees charged by or stewardship funds paid to any Holder; and

F. any funds paid into the Conservation Property Management Fund established pursuant to Paragraph 18.

Qualifying costs do not include any other payment, cost or expense. If the United States determines that the amount or type of any expenditure certified pursuant to Paragraph 20(B) is unreasonable, it shall disapprove that portion of the cost which it determines to be in excess of a reasonable cost.

22. Rohm and Haas shall submit periodic SEP Status Reports to EPA with the first such Status Report due no later than ninety (90) days after the entry of this Consent Decree. The SEP Status Reports shall contain the following: a detailed description of any efforts Rohm and Haas has made to implement the SEP, and a description of any problems encountered in the course of implementation. Additional reports shall be due at ninety (90) days intervals thereafter until the SEP Completion Report has been submitted. This schedule may be modified by written agreement between Rohm and Haas and EPA. Each SEP Status Report shall be signed as provided in Paragraph 33.

23. Rohm and Haas hereby certifies that, prior to the date of the lodging of the *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree*, Rohm and Haas was not required to perform or develop any aspect of the SEP by any federal, state or local law, regulation or requirement; nor was Rohm and Haas required to perform or develop any aspect of the SEP by agreement, grant or as injunctive relief in this or any other case. Rohm and Haas further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for any aspect of the SEP.

24. Nothing herein shall obligate Rohm and Haas to publicize its involvement in the SEP; however, any public statement, oral or written, made by Rohm and Haas to publicize its participation in SEP activities shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."

25. Rohm and Haas' expenditures in performing the SEP shall not relieve Rohm and Haas of its obligations to pay civil penalties under Section IV (Civil Penalty) of the August 10, 2006 Consent Decree. Defendant and its shareholders shall not deduct any SEP expenditures as a business expense in any income tax return and shall not derive any tax reduction or benefit as a result of the SEP expenditures.

II. CHANGES TO CONSENT DECREE SECTION XIX (TERMINATION)

2. Consent Decree Section XIX (Termination) (including Consent Decree Paragraphs 73 to 77) shall be replaced with the following:

XIX. Termination

73. A. As of the effective date of this *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree*, all provisions of the August 10, 2006 Consent Decree unrelated to the Supplemental Environmental Project shall be terminated. All provisions of the August 10, 2006 Consent Decree related to the Supplemental Environmental Project shall remain in effect until terminated pursuant to the provisions of this Section XIX (Termination).

B. After Rohm and Haas has completed all requirements of this Consent Decree related to the Supplemental Environmental Project, Rohm and Haas may serve upon the United States a Motion for Final Termination of Consent Decree ("Motion for Final Termination"), with supporting documentation

demonstrating that Rohm and Haas has successfully completed all requirements of this Decree related to the Supplemental Environmental Project.

C. In the event that the Court grants a Motion for Final Termination, the requirements of Subparagraph 15(B)(i) will not be terminated and will remain in effect.

74. Following receipt by the United States of Rohm and Haas' Motion for Final Termination, the Parties shall schedule one or more conferences (which may be by telephone) to discuss the Motion for Final Termination and any disagreement that the Parties may have as to whether Rohm and Haas has satisfactorily complied with the requirements of the Consent Decree related to the Supplemental Environmental Project. Such period of consultation shall continue for no less than 30 days following receipt of and no more than 120 days following receipt of Rohm and Haas' Motion for Final Termination.

75. If, following the consultation period provided for by Paragraph 74, the Parties cannot come to agreement as to whether Rohm and Haas has satisfactorily complied with the applicable requirements of the Consent Decree, Rohm and Haas may file its Motion for Final Termination with the Court.

76. The United States shall have the right to oppose Rohm and Haas' Motion for Final Termination and to seek continuation of the Consent Decree. If the United States opposes the Motion for Final Termination, Rohm and Haas shall have the burden of proof by clear and convincing evidence that Rohm and Haas has satisfactorily complied with the applicable requirements of the Consent Decree.

77. If, following the consultation period provided for by Paragraph 74, the Parties agree that Rohm and Haas has satisfactorily complied with the applicable requirements of the Decree, Rohm and Haas shall file with the Court an appropriate pleading so notifying the Court and requesting termination of the Decree.

3. This *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* shall be lodged with the Court for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* disclose facts or considerations indicating that the *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* is inappropriate, improper, or inadequate. Rohm and Haas consents to entry of this *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* without further notice.

4. Each undersigned representative of Rohm and Haas and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* and to execute and legally bind the Party he or she represents to this document.

5. This *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

6. Rohm and Haas hereby agrees not to oppose entry of this *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* by the Court or to challenge any provision of the *Agreement and Order Regarding Modification of the August 10, 2006 Consent Decree* unless the United States has notified Rohm and Haas in writing that it no longer supports entry of the Decree.

Dated and entered this _____ day of _____, 2008.

HONORABLE SIM LAKE
United States District Judge
Southern District of Texas

FOR THE UNITED STATES OF AMERICA

13 May 2008
Date

RONALD J. TENPAS
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

May 12, 2008
Date

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FOR ROHM AND HAAS TEXAS, INC.

4/23/08
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